

FILE NO. 83 1994

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER 1983 TERM

FULCHER TRUCKING OF ORIENTAL, INC.

Petitioner

v.

JUNE KEEL GASKILL, ADMINISTRATRIX
OF THE ESTATE OF CLIFTON ALEX ARMSTRONG, SR.

Respondent

On Writ of Certiorari
To The United States Court of Appeals
For the Forth Circuit

BRIEF IN OPPOSITION

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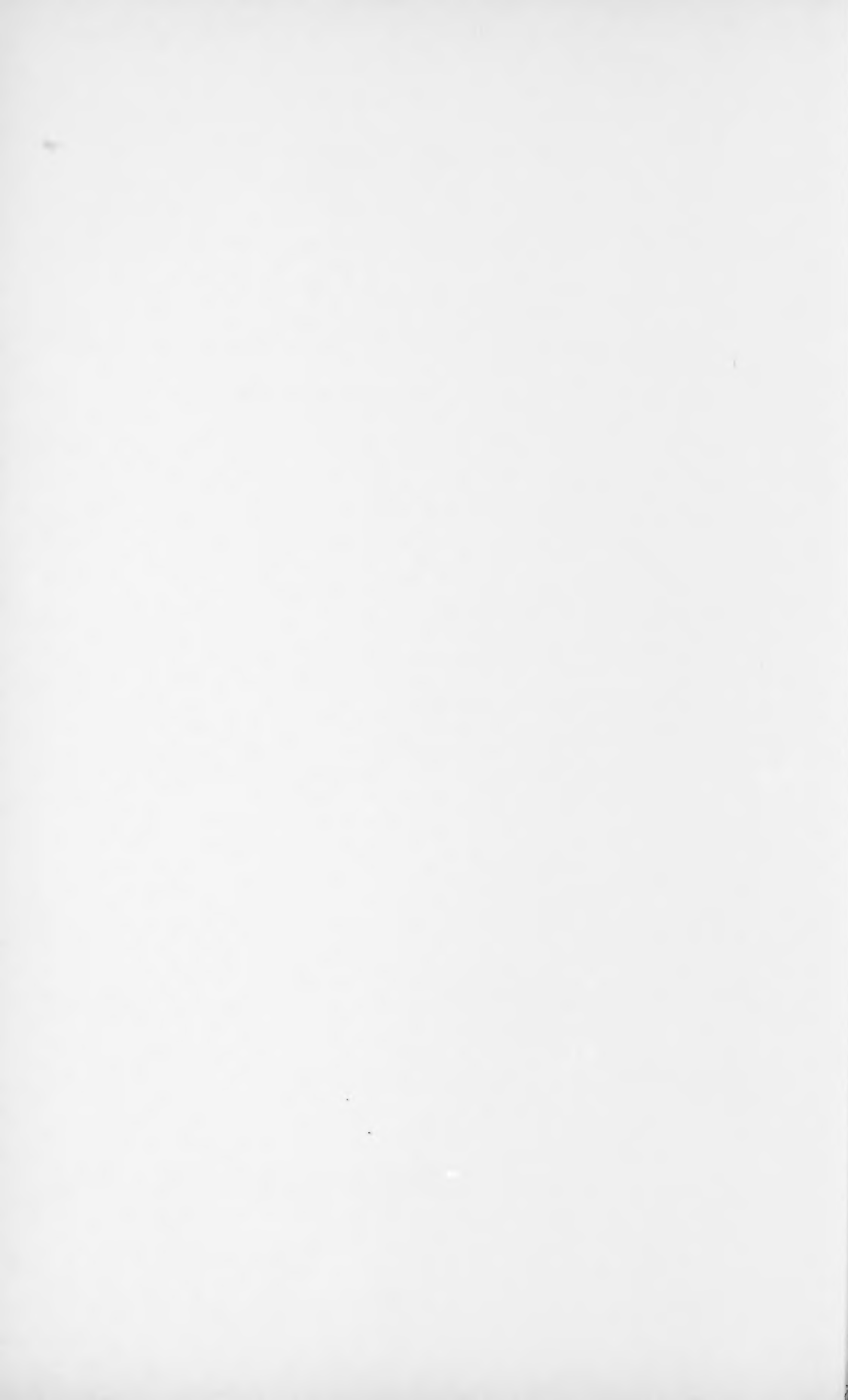


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ARGUMENT

There are no special or important reasons for this honorable court to review the decisions of the lower courts in this case. The trial court's decision was based essentially on findings that underscore the special, perhaps unique, facts at the heart of this matter. The opinion of the Court of Appeals for the Fourth Circuit affirms the abundance of evidence supporting the District Court's findings of fact and ultimate judgment. This case does not involve principals of law that will be of use in other fact situations. Existing law, when applied by the lower courts to the facts of this case, was quite adequate to lead to the proper decision that was rendered; a decision consistent with cases decided in this and other federal courts.

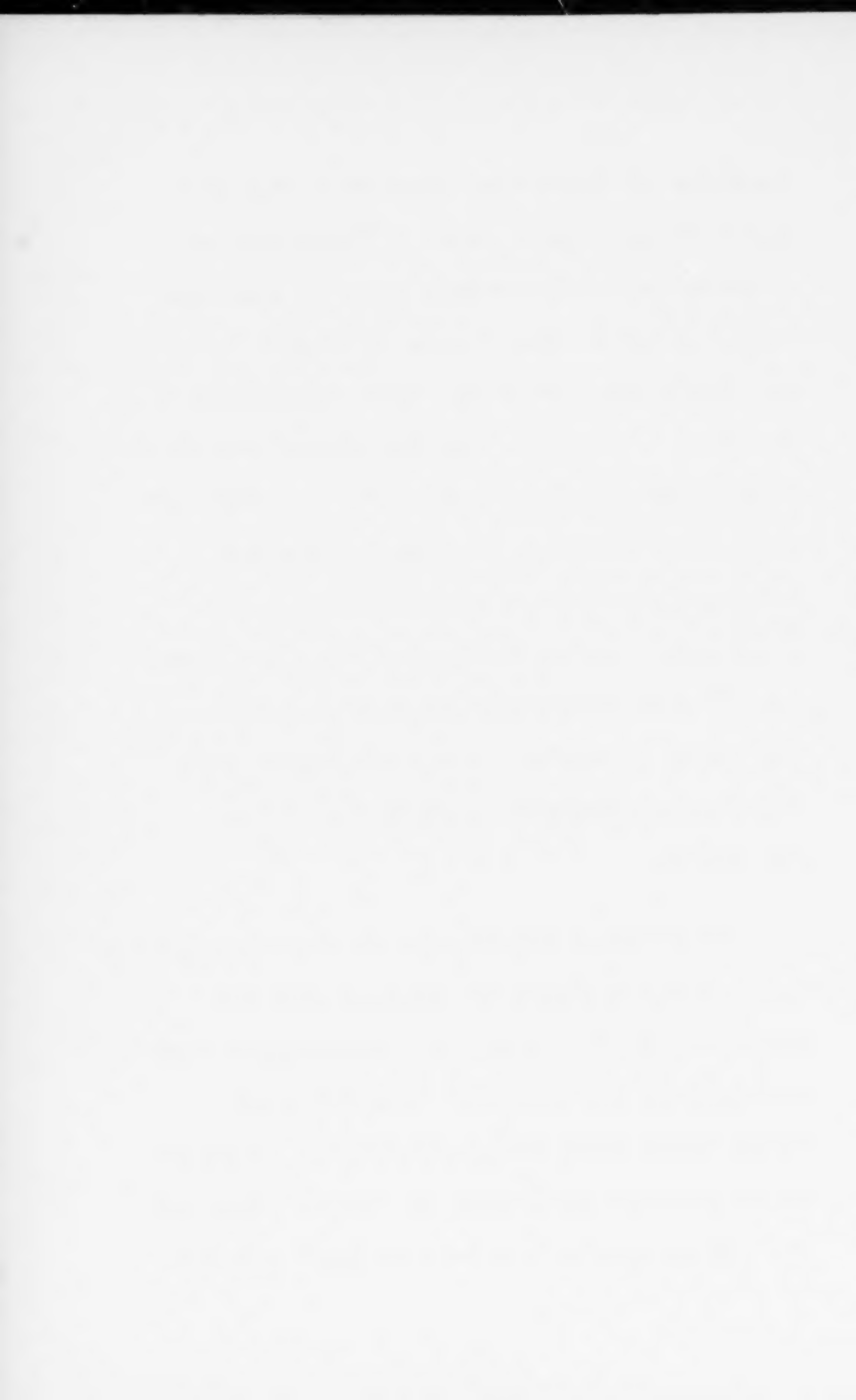
In the first question presented

(Petition, page i), petitioner assumes that the District Court was able to assess liability for unseaworthiness against it as an "owner" simply because it retained title as seller of a vessel under an installment sales contract. The second question presented (Petition, page i) challenges the trial court's finding that petitioner's stipulation as to ownership made it subject to the duties placed on owners of vessels by statutory and general principals of admiralty law. Respondent argues that the questions presented do not adequately state the decisions of either lower court, and that a thorough understanding of those decisions reveals their correctness.

Petitioner in the Pre-trial Order stipulated that it "... was the owner of the Dolphin, which ownership was so indicated on her documents...." (See

Appendix of Petition, page 3A.) The stipulation was unequivocal. There was no reservation or statement that it was the owner of bare legal title or that equitable ownership was with respondent's decedent. Further, the document, styled "Installment Sales Contract", involved in this case contains so many provisions inconsistent with a traditional installment sales contracts that the lower courts were compelled to find petitioner the owner notwithstanding arguments that the Uniform Commercial Code controlled ownership.

Of primary importance to the District Court and the Court of Appeals was the reservation of significant management type controls in petitioner. The district court found that the document, in addition to an express retention of title, required the respondent's decedent to pack product



with petitioner; required establishment of a joint checking account for the deposit of all moneys received by the Dolphin with expenditures only for certain items stated and only with a co-signature of an officer of the petitioner.

With the finding that the petitioner was the owner, the district court was correct in finding that it had the duty of providing a seaworthy vessel.

Shipping Company v. Sieracki, 328 U.S. 85, 66 S Ct. 872; Mitchell v. Trawler Racer, Inc., 362 U. S. 539, 80 S Ct. 926; Van Carpals v. S.S. American Harvester, 297 F 2d 9. The owner's duty to furnish a seaworthy ship is absolute. Mitchell v. Trawler Racer, Inc., supra; Van Carpals v. S.S. American Harvester, supra. "It is a settled principle of maritime law that a shipowner owes the duty of exercising reasonable care

towards those lawfully aboard the vessel who are not members of the crew."

Kermarec v. Compagnie Generale

Transatlantique, 358 U.S. 625, 79 S Ct.

406. "The owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case." Kermarac v Compagnie

Generale Transatlantique, supra. The

Death on the High Seas Act, 46 U.S.C. Sec

761 provides in relevant part that:

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State..., the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

Breach of the implied warranty of seaworthiness in admiralty is an act of neglect or default under the terms of the Death On The High Seas Act. Fosen v. United Technologies Corporation, 633 F 2d 203.

SUMMARY

In the first instance, the lower courts were entirely correct in finding, for purposes of this case that petitioner was the owner of the Dolphin at the time of sinking. The District Court and the Court of Appeals carefully examined the document labeled "Installment Sales Contract" and found as a result of the controls retained by petitioner that it had not transferred ownership so as to avoid liability for unseaworthiness under maritime law. The subsequent application of the law requiring owners to provide seaworthy vessels was correct. This case

is not in conflict with existing admiralty law. It is simply an application of existing law to facts found by the trial court from abundant evidence.

Respectfully submitted this 5th day of July, 1984.

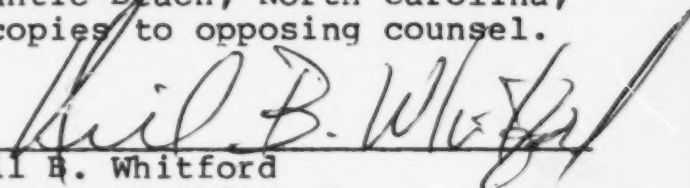
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CERTIFICATE OF SERVICE

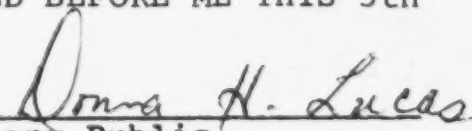
I hereby certify that on this 5th day of July, 1984, I, a member of the Bar of this Court deposited in a United States post office, with first class postage prepaid, the required copies of this Brief, properly addressed to the Clerk of the Supreme Court of the United States, within the time allowed for filing, and I further certify that I mailed this same date from Atlantic Beach, North Carolina, the required copies to opposing counsel.


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SWORN TO AND SUBSCRIBED BEFORE ME THIS 5th
DAY OF JULY, 1984.


Notary Public

my commission expires: 12/14/88